

HOMER OWENS

IBLA 84-348

Decided June 29, 1984

Appeal from a decision of the Arizona State Office, Bureau of Land Management, declaring mining claims null and void ab initio. A MC 211530 through A MC 211541 and A MC 213832 through A MC 213841.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

Mining claims located on land previously withdrawn from mineral entry by a Secretarial order of Dec. 14, 1904, pursuant to sec. 3 of the Act of June 17, 1902, are properly declared null and void ab initio. Therefore, no property rights are created. It is immaterial whether the lands are or have been used for the purpose for which they were withdrawn.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Homer Owens appeals from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated January 31, 1984, declaring appellant's mining claims A MC 211530 through A MC 211541 and A MC 213832 through A MC 213841 null and void ab initio. Pursuant to 43 U.S.C. § 1744 (1982) and 43 CFR 3833.1-2, notices of location for the above-referenced mining claims were filed for recording on December 16, 1983, and January 23, 1984. The mining claims were located on December 1, 1983, and January 1, 1984. The claims are located in sec. 3, T. 7 N., R. 6 E., Gila and Salt River meridian, Arizona.

BLM records reveal that all of the subject land was withdrawn by a Secretarial order dated December 14, 1904, pursuant to section 3 of the Act of June 17, 1902, 32 Stat. 388. ^{1/} BLM declared the subject claims null and void ab initio because appellant's claims were located after the lands were withdrawn by a first form reclamation withdrawal. BLM found that "[a]fter lands have been withdrawn under the First Form they cannot be entered,

^{1/} Section 3 of the Act of June 17, 1902, is presently codified at 43 U.S.C. §§ 416, 432, 434 (1982).

selected, or located in any manner so long as they remain so withdrawn, and all applications for such entries, selections, or locations presented after the date of such withdrawal should be rejected and denied."

Appellant, in his statement of reasons, contends that the withdrawal of the lands has fully served its purpose. Appellant argues that the withdrawal serves no present purpose, except that it impedes mining in a highly mineralized belt.

[1] It has been firmly established that a mining claim located on lands that are withdrawn from location is null and void ab initio, i.e., without legal effect from the beginning. E.g., Mineral Life Corp., 81 IBLA 103, 104 (1984); Samuel P. Speerstra, 78 IBLA 343, 344 (1984); Ronald B. McLean, 77 IBLA 380, 382 (1983); John L. Grassmeier, 77 IBLA 156, 159 (1983); Shiny Rock Mining Corp., 75 IBLA 136, 138, aff'd on reconsideration, 77 IBLA 261, 264 (1983); B. W. Copeland, 75 IBLA 87, 88 (1983); John A. Ross, 73 IBLA 16, 18 (1983); Elmer G. Thomas, 66 IBLA 92, 93 (1982); Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenhiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

Under the mining law, appellant has a right to enter and locate mining claims on public lands available for that purpose. However, property rights are not created by the location of mining claims on lands that are not open to mineral entry and location. Withdrawn lands are not open to mineral entry and location, therefore such claims are void as a matter of law, and thus no contest proceeding or hearing is required. See United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966); Shiny Rock Mining Corporation (On Reconsideration), supra at 264; B. W. Copeland, supra at 88; John A. Ross, supra at 17.

Appellant argues that the withdrawal of lands has served its purpose, and that no present positive purpose is being served by the withdrawal. However, "[i]t is immaterial whether the lands are or have been used for the purpose for which they were withdrawn." Samuel P. Speerstra, supra at 344. See Ronald W. Ramm, 67 IBLA 32, 34 (1982); William C. Reiman, 54 IBLA 103, 106 (1981); David W. Harper, 74 I.D. 141 (1967). The withdrawal of the subject lands on December 14, 1904, was valid and has not been formally revoked. Once land has been withdrawn from mineral entry, it remains withdrawn until the withdrawal is formally revoked. Samuel P. Speerstra, supra at 344. A valid mineral claim cannot be located until the withdrawal is revoked and the land is restored to mining entry. Samuel P. Speerstra, supra at 344; Raymond C. Gardner, 34 IBLA 179,180 (1978). 2/

2/ This decision is without prejudice to appellant's right to file an application for restoration of the subject land in the reclamation withdrawal to mineral entry pursuant to 43 U.S.C. § 154 (1982). See 43 CFR Subpart 3816; see generally, Joe Ashburn, 66 IBLA 328 (1982) (rejection of application for restoration of land within reclamation withdrawal to mineral entry reversed where the record fails to disclose that restoration is contrary to the public interest).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

